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CITY ATTORNEY

REPORT NO. **R 16 - 0 2 0 0**

JUN 1 6 2016

REPORT RE:

DRAFT ORDINANCE AMENDING SECTIONS 12.21 AND 12.33 OF ARTICLE 2 OF CHAPTER 1, AND SECTIONS 17.03, 17.12 AND 17.58 OF ARTICLE 7; DELETING SECTIONS 17.07 AND 19.01; AND ADDING SECTION 19.17 TO THE LOS ANGELES MUNICIPAL CODE TO UPDATE THE CITY'S PARK FEES

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 16-0529

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance amends Sections 12.21, 12.33, 17.03, 17.12 and 17.58 of the Los Angeles Municipal Code (LAMC); deletes Sections 17.07 and 19.01 from the LAMC; and adds Section 19.17 to the LAMC in order to update the City's park mitigation, or impact, fees, including Quimby fees (collectively referred to as park fees), to mitigate park and open space-related impacts of new residential development projects.

Background

On November 7, 2007, two motions were introduced at City Council relative to the City's Quimby ordinance and park mitigation fees. The first motion (Hahn-Reyes, Council File 07-3619) instructed the Department of City Planning (Planning) and the Department of Recreation and Parks (RAP) to revise the credits for on-site recreational amenities provided for in the Quimby ordinance to reflect the current costs associated

with construction. The second motion (Hahn-Rosendahl, Council File 07-3387-S2) instructed the Housing Department, in consultation with RAP, to develop a park mitigation fee to be imposed on new market-rate apartment and condominium conversions to market-place apartments. On November 28, 2007, a third motion was introduced (Smith-Garcetti-Hahn, Council File 05-1652) instructing Planning, in consultation with RAP and the City Attorney's Office, to determine the feasibility of expanding the service radius in which Quimby funds can be spent.

In February of 2008, the City Controller released an audit of fees collected pursuant to the Quimby ordinance, discussing specific concerns with the program and providing recommendations. (Council File 08-0449.) On August 1, 2012, a motion was introduced (Huizar-Alarcon, Council File 12-1178) instructing Planning to report on the status of efforts to revise the Quimby and Zone Change Park Fee (commonly referred to as the Finn fee) ordinances and referencing the prior Council Files for the motions relating to Quimby and park impact fees, as well as the Controller's audit.

At a meeting on August 13, 2015, the City Planning Commission (CPC) approved the Planning Department's proposed park fee ordinance, which amends the LAMC to update the City's Quimby fee and to impose a new park impact fee to replace the Finn fee. On May 17, 2016, the Planning and Land Use Management (PLUM) Committee of the City Council considered the proposed ordinance. The PLUM Committee revised the ordinance recommended by the CPC to remove a findings requirement related to the expenditure of park fees, and to clarify that affordable housing units are exempt from the park fee in the Downtown Housing Incentive Area. The PLUM Committee requested that the City Attorney's Office incorporate its revisions and prepare and transmit the final ordinance.

Summary of Ordinance Provisions

The enclosed draft ordinance amends the LAMC to update the Quimby fees so that the City's Quimby regulations are consistent with state law. It also replaces the Finn fee with a park impact fee imposed on non-subdivision residential projects, regardless of whether they are seeking a zone change. As described in Planning's Recommendation Report to the CPC dated March 24, 2016, the draft ordinance establishes flexible criteria for spending the collected fees, including an expansion of the fee expenditure radii for neighborhood, community and regional parks. It exempts certain affordable housing developments from fee payment and land dedication requirements. The draft ordinance also seeks to encourage land dedication over in-lieu fee payments where applicable, and provides for an early consultation meeting between applicants and Planning and RAP to discuss land dedication and credits.

California Environmental Quality Act (CEQA) Standard of Review

The CPC recommends that the City Council determine that the adoption of this ordinance does not constitute a "project," as defined by CEQA pursuant to CEQA Guidelines Section 15378(b)(4), which states that a "project" does not include "[t]he creation of government funding mechanisms or other government fiscal activities which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." Furthermore, even if it were found to be a project, the CPC recommends that the adoption of this ordinance is exempt from CEQA based upon the statutory exemption set forth in CEQA Guidelines Section 15273(a)(4) (Rates, Tolls, Fares, and Charges). Adoption of this statutory exemption is appropriate when the Council, exercising its independent judgment, determines that the project meets all of the requirements set forth in the above-referenced statute, based upon substantial evidence contained in the entire administrative record, and incorporates necessary written findings in the record.

The CPC additionally recommends that the City Council determines that this project is exempt from CEQA based upon the categorical exemptions set forth in CEQA Guidelines Sections 15301 (Class 1 Categorical Exemption for Existing Facilities), 15302 (Class 2 Categorical Exemption for Replacement or Reconstruction), 15303 (Class 3 Categorical Exemption for New Construction or Conversion of Small Structures), 15304 (Class 4 Exemption for Minor Alterations to Land), and 15316 (Class 16 Exemption for Transfer of Ownership of Land in Order to Create Parks). Adoption of these categorical exemptions are appropriate when the Council, exercising its independent judgment, determines that the project meets all of the requirements set forth in the above-referenced section of the CEQA Guidelines and that none of the exceptions to the use of a Categorical Exemption set forth in CEQA Guidelines, Section 15300.2 apply to this project, based upon substantial evidence contained in the entire administrative record.

Charter Findings Required

Charter Section 558(b)(3) requires the Council to make the findings required in Subsection (b)(2) of the same section; namely, whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the Council to adopt an ordinance conforming to the City Planning Commission's recommendation of approval of the ordinance, if the CPC recommends such approval. Similarly, Charter Section 556 requires the Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. The City Council can either adopt the City Planning Commission's findings and recommendations as set forth in the Director of Planning's transmittal to the Council on April 15, 2016, or make its own.

Notice Requirements

We note that, because this ordinance would impose a new fee, notice of its proposed adoption should be given in accordance with the provisions of California Government Code Sections 66018 and 6062a. Those sections of State law require that prior to adoption of a new or increased fee a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

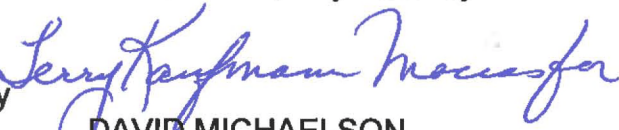
Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to RAP, the Department of Building and Safety and the Housing and Community Investment Department. The departments were requested to report their comments, if any, directly to the City Council or its Committee when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasanee at (213) 978-8246. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

DM:ASK:gl
Transmittal